

Reichhold Chemicals, Inc. and Teamsters Local 515.
Case 10-CA-20331

February 14, 1992

**SECOND SUPPLEMENTAL DECISION AND
ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND OVIATT

On March 17, 1988, the Board issued a Supplemental Decision and Order in this proceeding¹ in which, on reconsideration of its prior decision,² it reaffirmed its initial findings that the Respondent had not engaged in surface bargaining and that the Respondent did not violate the Act by negotiating to impasse over a proposal waiving the employees' right to engage in unfair labor practice strikes. Further, on reconsideration, the Board, reversing its earlier finding, concluded that the Respondent's insisting to impasse on a proposal to waive the employees' right of access to the Board violated the Act because the proposal concerned a nonmandatory subject of bargaining. The Board nonetheless found that the Respondent's insistence to impasse on the no-access proposal was not a contributing cause of the April 1-6, 1984 strike and thus concluded that the strike was an economic strike.

The United States Court of Appeals for the District of Columbia Circuit issued an opinion June 22, 1990,³ affirming the Board's supplemental decision except insofar as it found the April 1984 strike to be an economic strike. Rather, the court found that

the employees followed their Union leader's recommendation to strike, in part because of his view that the provisions of the no-strike clause were outrageous. In so voting, the employees ratified the Union leader's judgment that they should strike because of the [Respondent's] demand for a no-access provision.

Id. at 726. The court remanded the case to the Board for modification of its Order in accordance with the decision, including reinstatement and a backpay determination. The Board thereafter advised the parties that it had accepted the remand, and invited them to file statements of position. The General Counsel, the

Union,⁴ and the Respondent⁵ filed statements of position.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

We accept the court's remand as the law of the case. Thus, we conclude that the Respondent's unlawful insistence to impasse on the no-access proposal was a contributing cause of the April 1984 strike and that the strike was an unfair labor practice strike. We therefore conclude that the Respondent violated Section 8(a)(3) of the Act by refusing to reinstate all unfair labor practice strikers on their unconditional offer to return to work.⁶ Accordingly, we shall issue a modified Order and a Notice to Employees.

ORDER

The National Labor Relations Board orders that the Respondent, Reichhold Chemicals, Inc., Kensington, Georgia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening its employees with discharge or other reprisals if they engage in concerted activities on behalf of the Union, or with the futility of their continued support of the Union as their bargaining agent.

(b) Refusing to bargain in good faith with any union that is the certified or recognized collective-bargaining representative of its employees by insisting to impasse on the waiver of the employees' statutory rights to seek redress from the Board for discipline imposed under a no-strike provision.

(c) Refusing to reinstate unfair labor practice strikers on their unconditional offer to return to work.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with any union that is the certified or recognized collective-bargaining represent-

⁵ The Respondent requested in its position statement that the Board stay further proceedings in this case until the U.S. Supreme Court resolves the issues raised in its petition for a writ of certiorari. On January 14, 1991, the Court denied the Respondent's petition, *Reichhold Chemicals v. Teamsters Local 515*, 136 LRRM 2152, 111 S.Ct. 767 (1991).

⁶ The Board stated in *Reichhold Chemicals*, 277 NLRB 639 (1985),

The Union struck the Respondent on 1 April 1984. The strike ended on 6 April 1984 when the Union made an unconditional return-to-work offer on behalf of all striking employees. At that point the Respondent ceased hiring permanent replacements for strikers, recalled a number of strikers who had not been replaced, and placed the remaining strikers on a preferential hiring list. As of the hearing, 27 strikers had not been returned to work despite their unconditional offers to do so.

In light of our conclusion that the Respondent violated Sec. 8(a)(3) by refusing to reinstate unfair labor practice strikers, we shall order the Respondent to offer all unfair labor practice strikers full and immediate reinstatement and to make them whole for any loss of earnings or other benefits they may have suffered as a result of the discrimination against them, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

¹ 288 NLRB 69.

² *Reichhold Chemicals*, 277 NLRB 639 (1985).

³ *Teamsters Local 515 v. NLRB*, 906 F.2d 719 (D.C. Cir. 1990).

⁴ In its statement of position, the Union asserts, inter alia, that, as a result of the D.C. Circuit Court decision, the Board should vacate its January 1986 Certification of Results of the decertification election held June 1984 in Case 10-RD-891. The Union argues that the election was tainted by the Respondent's unremedied violation of Sec. 8(a)(3). We note, however, that the Union failed to preserve its position in Case 10-RD-891 by failing to challenge the ballots of the replacement employees who voted in the June 1984 election and also by failing to file timely objections to the election in December 1985, when the tally of ballots was prepared. We will not, therefore, vacate the January 1986 Certification of Results.

ative of the employees⁷ in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement. The appropriate unit is:

All production and maintenance employees employed by Respondent at its Kensington, Georgia facility, including lab technicians, but excluding all office clerical employees, professional employees, technical employees, guards, and supervisors as defined in the Act.

(b) Offer all employees who engaged in the April 1–6, 1984 unfair labor practice strike immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, dismissing, if necessary, any employees hired as replacements on or after April 1, 1984, for those positions. If insufficient jobs are available for these employees, they shall be placed on a preferential hiring list and they will be offered employment before any other persons are hired. Make whole all unfair labor practice strikers for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth above.

(c) Remove from its files any reference to the unlawful refusal to reinstate the unfair labor practice strikers on their April 6, 1984 unconditional offer to return to work, and notify the employees in writing that this has been done and that the refusal of reinstatement will not be used against them in any way.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its facility in Kensington, Georgia, copies of the attached notice marked “Appendix.”⁸ Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten our employees with discharge or other reprisals because of their support of Teamsters Local 515 or their engagement in concerted activities, or with the futility of their continued support of the Union as their bargaining agent.

WE WILL NOT refuse to bargain in good faith with any union that is the certified or recognized collective-bargaining representative of our employees by insisting to impasse on the waiver of the employees’ statutory rights to seek redress from the Board for discipline imposed under a no-strike provision.

WE WILL NOT refuse to reinstate unfair labor practice strikers upon their unconditional offer to return to work.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with any union that is the certified or recognized collective-bargaining representative of our employees and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining unit:

All production and maintenance employees employed by us at our Kensington, Georgia facility, including lab technicians, but excluding all office clerical employees, professional employees, technical employees, guards, and supervisors as defined in the Act.

WE WILL offer all our employees who engaged in the April 1–6, 1984 unfair labor practice strike immediate and full reinstatement to their former jobs or, if

⁷ See *Reichhold Chemicals*, 288 NLRB 69, 73 fn. 22 (1988).

⁸ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed. WE WILL dismiss, if necessary, any employees we hired on or after April 1, 1984, as replacements for those positions. If insufficient jobs are available for the unfair labor practice strikers, WE WILL place them on a preferential hiring list and WE WILL offer them employment before we hire any other persons. WE WILL make whole all unfair labor practice strikers for any loss of earnings and other benefits suffered as a result of the

discrimination against them, less any net interim earnings, plus interest.

WE WILL remove from our files any reference to the unlawful refusal to reinstate the unfair labor practice strikers on their April 6, 1984 unconditional offer to return to work, and WE WILL notify each of them in writing that we have done this and that we will not use the refusal of reinstatement against them in any way.

REICHHOLD CHEMICALS, INC.